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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,743	10/19/2001	Roland Bernard	Q66747	6128

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EXAMINER	
RIVELL, JOHN A	
ART UNIT	**PAPER NUMBER**
3753	

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/981,743	BERNARD ET AL.	
	Examiner	Art Unit	
	John Rivell	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10/19/01 (application)*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *21-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *19 October 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. 09/614,591.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 3753.

By preliminary amendment filed concurrently with the application, claims 1-20 have been canceled and new claims 21-28 have been added. Thus claims 21-28 are pending.

Claim 26 is objected to because of the following informalities: In lines 2-3 note the duplicate phrase in the recitation "provided with temperature monitoring and regulation apparatus for monitoring and regulation apparatus for monitoring and regulating the temperature of...". Appropriate correction is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 21 and 22 are rejected under 35 U.S.C. 102(a) as being anticipated by Reimer et al.

The European Patent to Reimer et al. discloses, in figure 2, an "apparatus for conditioning the atmosphere in a vacuum chamber (120), said apparatus comprising: a vacuum line (120, 182, 160, 185, 170a, 160, 175a, respectively) including said vacuum chamber (120) and comprising a pumping apparatus (high vacuum pump 160 or pre vacuum pump 165a); and isolation means (the reduction of mechanical vibration as

discloses at page 8, lines 27-28) enabling the disturbance caused by the pumping apparatus to the vacuum chamber to be reduced" as recited.

Regarding claim 22, in Reimer et al. "the pumping apparatus (pre vacuum pump 165a) is disposed in the immediate vicinity of the vacuum chamber (120) " as recited.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reimer et al. in view of Curwen.

The patent to Reimer et al. discloses all the claimed features with the exception of having "the primary pump (165a) is enclosed in an isolation enclosure" (claim 23) and "active vibration-compensating means for compensating the mechanical vibrations generated by the contents of the isolation enclosure" (claim 27).

The patent to Curwen discloses that it is known in the art to employ an enclosure 12 about a pump apparatus 20, including an "active" counter vibration system including weights 38 located on tubes for the purpose of protecting the pumping apparatus and reducing or eliminating the vibration produced by the machine, respectively.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Reimer et al. an enclosure about the pump 165a and to include within the enclosure an active vibration damping system for the purpose of protecting the pump and to actively reduce or eliminate vibration caused by the pomp apparatus as recognized by Curwen.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21, 27 and 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16, 16 and 19, respectively, of U.S. Patent No. 6,316,045. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the instant claimed features are contained within the scope of the respective patented claims. Thus when making and/or using the device of the patented claim, one will necessarily be making and/or using the device of the instant application claims. This constitutes an unlawful extension of monopoly.

Claims 22-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 16 of U.S. Patent No. 6,316,045 in view of Reimer et al.

The device of patented claim 16 discloses all the claimed features with the exception of having "the pumping apparatus disposed in the immediate vicinity of the vacuum chamber".

The patent to Reimer et al. discloses that it is known in the art to employ a pumping apparatus 165a, "in the immediate vicinity of" a vacuum chamber fluidly connected thereto for the purpose of reducing the plumbing connections between the pump and the vacuum chamber thus reducing the potential for contamination of the vacuum chamber.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in the device of patented claim 16 disposition of the "pumping apparatus" therein "in the immediate vicinity" of the vacuum chamber of the patented device for the purpose of reducing the potential for contaminating the vacuum chamber as recognized by Reimer et al.

Claim 27 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 17 of U.S. Patent No. 6,316,045 in view of Reimer et al.

The device of patented claim 17 discloses all the claimed features with the exception of having "the pumping apparatus disposed in the immediate vicinity of the vacuum chamber".

The patent to Reimer et al. discloses that it is known in the art to employ a pumping apparatus 165a, "in the immediate vicinity of" a vacuum chamber fluidly connected thereto for the purpose of reducing the plumbing connections between the pump and the vacuum chamber thus reducing the potential for contamination of the vacuum chamber.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in the device of patented claim 17 disposition of the "pumping apparatus" therein "in the immediate vicinity" of the vacuum chamber of the patented device for the purpose of reducing the potential for contaminating the vacuum chamber as recognized by Reimer et al.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Rivell whose telephone number is (703) 308-2599. The examiner can normally be reached on Mon.-Thur. from 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (703) 308-1272. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/John Rivell/

John Rivell
Primary Examiner
Art Unit 3753

j.r.